

CLOSED, ECF

**U.S. District Court
Southern District of New York (Foley Square)
CIVIL DOCKET FOR CASE #: 1:09-cv-00304-PGG**

Levine et al v. Merrill Lynch, Pierce, Fenner &Smith
Incorporated et al
Assigned to: Judge Paul G. Gardephe
Related Case: 1:09-cv-00672-PGG
Similar Case: 1:11-cv-02405-PGG
Cause: 29:201 Fair Labor Standards Act

Date Filed: 01/12/2009
Date Terminated: 08/24/2010
Jury Demand: Plaintiff
Nature of Suit: 710 Labor: Fair Standards
Jurisdiction: Federal Question

Plaintiff

Andrea Levine
*on their own behalf and on behalf of all
those similarly situated*

represented by **Brian Scott Schaffer**
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Plaintiff

Ivey Moore
*on their own behalf and on behalf of all
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Plaintiff

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Plaintiff

Jourdan Sutton

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Plaintiff

Kiota Blakeney

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Plaintiff

Sashalla Lemond

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Plaintiff

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Plaintiff

Filipp Vygovskiy

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Plaintiff**Marta Ordonez**represented by **Brian Scott Schaffer**
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V.

Defendant**Merril Lynch, Pierce, Fenner &Smith
Incorporated**represented by **Philip A. Goldstein**
(See above for address)
ATTORNEY TO BE NOTICED**Defendant****Merrill Lynch &Co. Inc.**represented by **Philip A. Goldstein**
(See above for address)
ATTORNEY TO BE NOTICED**Defendant****Bank of America Corporation**represented by **Philip A. Goldstein**
(See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
01/12/2009	<u>1</u>	COMPLAINT against Merrill Lynch, Pierce, Fenner &Smith Incorporated, Merrill Lynch &Co. Inc., Bank of America Corporation. (Filing Fee \$ 350.00, Receipt Number 674716)Document filed by Andrea Levine, Ivey Moore.(rdz) (mbe). (Entered: 01/14/2009)
01/12/2009		SUMMONS ISSUED as to Merrill Lynch, Pierce, Fenner &Smith Incorporated, Merrill Lynch &Co. Inc., Bank of America Corporation. (rdz) (Entered: 01/14/2009)
01/12/2009		Magistrate Judge Frank Mass is so designated. (rdz) (Entered: 01/14/2009)
01/12/2009		Case Designated ECF. (rdz) (Entered: 01/14/2009)
01/12/2009		***NOTE TO ATTORNEY TO E-MAIL PDF. Note to Attorney Brian Scott Schaffer for noncompliance with Section (14.3) of the S.D.N.Y. Electronic Case Filing Rules &Instructions. E-MAIL the PDF for Document <u>1</u> Complaint to: case_openings@nysd.uscourts.gov. (rdz) (Entered: 01/14/2009)
01/20/2009	<u>2</u>	CONSENT TO SUE UNDER THE F.L.S.A.. Document filed by Deryck Nurse.(Schaffer, Brian) (Entered: 01/20/2009)
02/06/2009	<u>3</u>	AFFIDAVIT OF SERVICE. Merrill Lynch, Pierce, Fenner &Smith Incorporated served on 1/30/2009, answer due 2/19/2009; Merrill Lynch &Co. Inc. served on 1/30/2009, answer due 2/19/2009. Service was accepted by Jenny Lee, Paralegal. Document filed by Andrea Levine. (Schaffer, Brian) (Entered: 02/06/2009)
02/06/2009	<u>4</u>	AFFIDAVIT OF SERVICE. Bank of America Corporation served on 1/30/2009, answer due 2/19/2009. Service was accepted by Mark F. Borowski, Paralegal. Document filed by Andrea Levine. (Schaffer, Brian) (Entered: 02/06/2009)
02/09/2009	<u>5</u>	CONSENT TO SUE UNDER THE F.L.S.A.. Document filed by Jourdan Sutton.(Schaffer, Brian) (Entered: 02/09/2009)
02/10/2009	<u>6</u>	Notice of Pretrial Conference, that an initial pretrial conference in accordance with Rule 16 of the Federal Rules of Civil Procedure on Monday, March 9, 2009, at 12:15 P.M., in Courtroom 14C at the United States Courthouse, 500 Pearl Street, New York, New York. Additional relief as set forth in this order. (Signed by Judge

		Paul G. Gardephe on 2/9/09) (pl) (Entered: 02/10/2009)
02/13/2009	<u>7</u>	CONSENT TO SUE UNDER THE F.L.S.A.. Document filed by Kiota Blakeney.(Schaffer, Brian) (Entered: 02/13/2009)
02/23/2009	<u>8</u>	STIPULATION: It is hereby stipulated and agreed by and between the parties that the time for defendants to answer, move or otherwise respond to the complaint is extended to and including March 23, 2009. (Signed by Judge Paul G. Gardephe on 2/23/2009) (jpo) (Entered: 02/23/2009)
03/02/2009	<u>9</u>	JOINT PRE-CONFERENCE STATEMENT. Document filed by Merrill Lynch, Pierce, Fenner &Smith Incorporated. (Attachments: # <u>1</u> Supplement Plaintiff's Proposed Case Managemet Plan, # <u>2</u> Supplement Defendants' Proposed Case Management Plan)(Goldstein, Philip) (Entered: 03/02/2009)
03/09/2009		Minute Entry for proceedings held before Judge Paul G. Gardephe: Status Conference held on 3/9/2009. (mro) (Entered: 03/09/2009)
03/09/2009	<u>10</u>	CONSENT BRIEF <i>Stipuation Regarding Second Cause of Action</i> . Document filed by Merrill Lynch, Pierce, Fenner &Smith Incorporated.(Goldstein, Philip) (Entered: 03/09/2009)
03/15/2009	<u>11</u>	FILING ERROR - ELECTRONIC FILING FOR NON-ECF DOCUMENT - JOINT PRE-CONFERENCE STATEMENT (JOINT PROPOSED CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER). Document filed by Bank of America Corporation.(Goldstein, Philip) Modified on 3/16/2009 (KA). (Entered: 03/15/2009)
03/16/2009	<u>12</u>	CONSENT TO SUE UNDER THE F.L.S.A.. Document filed by Sashalla Lemond.(Schaffer, Brian) (Entered: 03/16/2009)
03/16/2009		***NOTE TO ATTORNEY TO RE-FILE DOCUMENT - NON-ECF DOCUMENT ERROR. Note to Attorney Philip A. Goldstein to E-MAIL pdf copy to judgments@nysd.uscourts.gov Document No. <u>11</u> Joint Proposed Civil Case Management Plan and Scheduling Order. This document is not filed via ECF. (KA) (Entered: 03/16/2009)
03/20/2009	<u>13</u>	CIVIL CASE MANAGEMENT PLAN AND SCHEDULING ORDER: all parties do not consent to conducting further proceedings before a Magistrate Judge, including motions and trial, pursuant to 28 USC 636(c). Jury trial. Counsel for the parties have conferred and their present best estimate of the length of trial is 10 days. Expert Discovery due by 4/12/2010, see document for other deadlines. (Signed by Judge Paul G. Gardephe on 3/20/09) (cd) (Entered: 03/20/2009)
03/23/2009	<u>14</u>	FIRST RULE 7.1 CORPORATE DISCLOSURE STATEMENT. Identifying Merill Lynch &Co, Inc. as Corporate Parent. Document filed by Merrill Lynch, Pierce, Fenner &Smith Incorporated.(Goldstein, Philip) (Entered: 03/23/2009)
03/23/2009	<u>15</u>	ANSWER to Complaint. Document filed by Merrill Lynch, Pierce, Fenner &Smith Incorporated, Merrill Lynch &Co. Inc..(Goldstein, Philip) (Entered: 03/23/2009)
05/04/2009	<u>16</u>	FIRST MOTION to Strike Document No. <u>15</u> <i>DEFENDANTS' AFFIRMATIVE DEFENSES</i> . Document filed by Andrea Levine.(Schaffer, Brian) (Entered: 05/04/2009)
05/04/2009	<u>17</u>	DECLARATION of Brian Schaffer in Support re: <u>16</u> FIRST MOTION to Strike Document No. <u>15</u> <i>DEFENDANTS' AFFIRMATIVE DEFENSES</i> .. Document filed by Andrea Levine. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Schaffer, Brian) (Entered: 05/04/2009)
05/04/2009	<u>18</u>	CERTIFICATE OF SERVICE of Motion to strike served on Merrill Lynch, Bank of America on 4/13/09. Service was made by MAIL. Document filed by Andrea Levine. (Schaffer, Brian) (Entered: 05/04/2009)
05/04/2009	<u>19</u>	FIRST MEMORANDUM OF LAW in Support re: <u>16</u> FIRST MOTION to Strike Document No. <u>15</u> <i>DEFENDANTS' AFFIRMATIVE DEFENSES</i> .. Document filed by Andrea Levine. (Schaffer, Brian) (Entered: 05/04/2009)

05/04/2009	<u>20</u>	CERTIFICATE OF SERVICE of Memorandum of Law in Support of Plaintiff's Motion to Strike served on Merrill Lynch, Bank of America on 4/13/09. Service was made by MAIL. Document filed by Andrea Levine. (Schaffer, Brian) (Entered: 05/04/2009)
05/04/2009	<u>21</u>	RESPONSE in Opposition re: <u>16</u> FIRST MOTION to Strike Document No. <u>15</u> DEFENDANTS' AFFIRMATIVE DEFENSES.. Document filed by Merrill Lynch, Pierce, Fenner &Smith Incorporated, Merrill Lynch &Co. Inc.. (Goldstein, Philip) (Entered: 05/04/2009)
05/04/2009	<u>22</u>	FIRST REPLY MEMORANDUM OF LAW in Support re: <u>16</u> FIRST MOTION to Strike Document No. <u>15</u> DEFENDANTS' AFFIRMATIVE DEFENSES.. Document filed by Andrea Levine. (Schaffer, Brian) (Entered: 05/04/2009)
05/04/2009	<u>23</u>	CERTIFICATE OF SERVICE of Reply memorandum of law served on Merrill Lynch, Bank of America on 5/4/09. Service was made by MAIL. Document filed by Andrea Levine. (Schaffer, Brian) (Entered: 05/04/2009)
06/02/2009	<u>24</u>	FILING ERROR – ELECTRONIC FILING FOR NON–ECF DOCUMENT – FIRST MOTION to Certify Class <i>Stipulation Regarding Motion for Conditional Certification</i> . Document filed by Andrea Levine, Deryck Nurse, Jourdan Sutton, Kiota Blakeney, Ivey Moore, Sashalla Lemond, Merrill Lynch, Pierce, Fenner &Smith Incorporated, Merrill Lynch &Co. Inc., Bank of America Corporation. Responses due by 6/3/2009 Return Date set for 6/12/2009 at 10:00 AM. (Attachments: # <u>1</u> Exhibit Proposed Notice of Pendency)(Goldstein, Philip) Modified on 6/3/2009 (db). (Entered: 06/02/2009)
06/02/2009		***NOTE TO ATTORNEY TO RE–FILE DOCUMENT – NON–ECF DOCUMENT ERROR. Note to Attorney Philip A. Goldstein to E–MAIL Document No. <u>24</u> Stipulation to Certify Class to judgments@nysd.uscourts.gov. This document is not filed via ECF. (db) (Entered: 06/03/2009)
08/04/2009	<u>25</u>	STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Paul G. Gardephe on 8/3/2009) (jpo) (Entered: 08/04/2009)
09/24/2009	<u>26</u>	ENDORSED LETTER addressed to Judge Paul G. Gardephe from Brian Schaffer dated 9/17/09 re: Request for a conference to address the insufficiency of Defendants' discovery responses. ENDORSEMENT: A telephone conference will take place on 10/9/09 at 2 pm. Plaintiffs are directed to fax to chambers by 10/6/09 a letter identifying the requests in dispute and why Plaintiff is entitled to these materials. Defendant will respond in a faxed letter to chambers by 10/8/09. (Telephone Conference set for 10/9/2009 at 02:00 PM before Judge Paul G. Gardephe.) (Signed by Judge Paul G. Gardephe on 9/23/09) (cd) (Entered: 09/24/2009)
10/09/2009	<u>27</u>	NOTICE OF APPEARANCE by Joseph A. Fitapelli on behalf of Andrea Levine, Deryck Nurse, Jourdan Sutton, Kiota Blakeney, Ivey Moore, Sashalla Lemond (Fitapelli, Joseph) (Entered: 10/09/2009)
10/13/2009	<u>28</u>	ORDER: It is hereby ORDERED that Defendants produce approximately 4,000 pages of documents requested by Plaintiffs, consisting of travel vouchers and computer log–in information, by October 16, 2009. It is further ORDERED that Defendants produce approximately 10,000 e–mails requested by Plaintiffs in rolling weekly installments to be completed by November 10, 2009. It is further ORDERED that this Court will hold a conference in the above–captioned actions on Monday, November 16, 2009 at 3:45 P.M. (Signed by Judge Paul G. Gardephe on 10/9/2009) (jfe) (Entered: 10/13/2009)
10/13/2009	<u>29</u>	STIPULATION REGARDING PLAINTIFF'S MOTION FOR CONDITIONAL CLASS CERTIFICATION AND CONDITIONAL NOTICE TO PUTATIVE CLASS ORDER: It is hereby stipulated and agreed that the parties have agreed to a proposed notice for purposes of conditional certification only, which is attached as Exhibit "A". Within 10 days of Judge Gardephe executing the Order approving this stipulation and the proposed notice attached hereto, Defendants shall provide, in electronic and importable format, a list of all current and former senior specialists, credit derivatives settlements, who worked at Merrill Lynch's World Financial

		Center in New York City at any time from June 1, 2006 through June 1, 2009. The list shall include the employees' full name, job title, dates of employment, date of birth, telephone number, last known address and personal e-mail address, if in Defendants' possession. The notice period shall be 45 days from the date Plaintiff receives the employee list. Defendants' retain all rights to move decertify the putative class at a later date. (Signed by Judge Paul G. Gardephe on 10/9/2009) (jfe) (Entered: 10/13/2009)
10/30/2009	<u>30</u>	CONSENT TO SUE UNDER THE F.L.S.A.. Document filed by Gary Kotlyar.(Schaffer, Brian) (Entered: 10/30/2009)
11/05/2009	<u>31</u>	ORDER: This Court will hold a conference in the above captioned actions on November 10, 2009 at 3:30 p.m. in Courtroom 6A of the United States Courthouse, 500 Pearl Street, New York, New York. (Signed by Judge Paul G. Gardephe on 11/4/2009) (jpo) (Entered: 11/05/2009)
11/10/2009	<u>32</u>	CONSENT TO SUE UNDER THE F.L.S.A.. Document filed by Filipp Vygovskiy.(Schaffer, Brian) (Entered: 11/10/2009)
11/10/2009		Minute Entry for proceedings held before Judge Paul G. Gardephe: Status Conference held on 11/10/2009. Next Conference set for 3/8/2010 at 10:00 AM before Judge Paul G. Gardephe. (mro) (Entered: 11/12/2009)
11/16/2009	<u>33</u>	CONSENT TO SUE UNDER THE F.L.S.A.. Document filed by Marta Ordonez.(Schaffer, Brian) (Entered: 11/16/2009)
11/19/2009	<u>34</u>	ORDER: Defendants produce discovery regarding Plaintiffs Sashilla Lemond, Kiota Blakeney, Deryck Nurse and Jourdan Sutton, including the requested personnel files, offer letters, compensation summaries, annual reviews and black car records. The parties pursue mediation between now and the end of February 2010, as previously agreed. This Court will hold a conference in the above captioned action on Monday, 3/18/2010 at 10:00 AM before Judge Paul G. Gardephe. (Signed by Judge Paul G. Gardephe on 11/18/09) (tro) (Entered: 11/19/2009)
11/30/2009	<u>35</u>	CONSENT TO BECOME PARTY PLAINTIFF UNDER THE F.L.S.A.. Document filed by Gary Kotlyar, Filipp Vygovskiy, Marta Ordonez, Andrea Levine, Deryck Nurse, Jourdan Sutton, Kiota Blakeney, Ivey Moore, Sashalla Lemond.(Schaffer, Brian) (Entered: 11/30/2009)
12/03/2009	<u>36</u>	CONSENT TO BECOME PARTY PLAINTIFF UNDER THE F.L.S.A.. Document filed by Gary Kotlyar, Filipp Vygovskiy, Marta Ordonez, Andrea Levine, Deryck Nurse, Jourdan Sutton, Kiota Blakeney, Ivey Moore, Sashalla Lemond.(Schaffer, Brian) (Entered: 12/03/2009)
12/22/2009	<u>37</u>	ORDER: For the foregoing reasons, Plaintiffs' motions to strike are DENIED as to affirmative defenses 4, 6-9,11,16,18,20-24,26-31,36-38,40, and 43-44. Plaintiff Kobakhidze's motion to strike affirmative defenses 10 and 14 is GRANTED. Plaintiffs Levine and Moore's motion to strike affirmative defenses numbers 10 and 14 is DENIED.Defendants are ORDERED to file Amended Answers in each of the above captioned actions within one week of the entry of this Order.The Clerk of the Court is directed to terminate the following motions: 09 Civ.304 (Docket No. 16) and 09 Civ. 672 (Docket No. 13). So ordered. (Signed by Judge Paul G. Gardephe on 12/22/09) (js) (Entered: 12/22/2009)
12/29/2009	<u>38</u>	AMENDED ANSWER to <u>1</u> Complaint. Document filed by Bank of America Corporation. (Goldstein, Philip) (Entered: 12/29/2009)
03/03/2010	<u>39</u>	ENDORSED LETTER: addressed to Judge Paul G. Gardephe from Philip A. Goldstein dated 3/2/2010 re: Counsel for Merrill Lynch request that the conference which is currently scheduled for Monday March 8, 2010 be adjourned to provide the parties with additional time to resolve this matter on their own. The parties request that the conference in these matters be adjourned to Wednesday, April 14, 2010 at 11:45 a.m. ENDORSEMENT: The application is granted. So Ordered. (Signed by Judge Paul G. Gardephe on 3/2/2010) (js) (Entered: 03/03/2010)
03/03/2010		Set Deadlines/Hearings: Status Conference set for 4/14/2010 at 11:45 AM before Judge Paul G. Gardephe. (js) (Entered: 03/03/2010)

04/05/2010	<u>40</u>	ORDER: A status conference in the above-captioned actions was scheduled to be held on 4/14/2010. That conference is adjourned. This Court will hold a conference in these actions on Thursday, 4/22/2010 at 4:00 PM in Courtroom 6B, United States Courthouse, 500 Pearl Street, New York, New York. (Signed by Judge Paul G. Gardephe on 4/2/2010) (tro) (Entered: 04/05/2010)
04/13/2010	<u>41</u>	CONSENT TO BECOME PARTY PLAINTIFF UNDER THE F.L.S.A.. Document filed by Gary Kotlyar, Filipp Vygovski, Marta Ordonez, Andrea Levine, Deryck Nurse, Jourdan Sutton, Kiota Blakeney, Ivey Moore, Sashalla Lemond.(Schaffer, Brian) (Entered: 04/13/2010)
04/22/2010		Minute Entry for proceedings held before Judge Paul G. Gardephe: Status Conference held on 4/22/2010, (Status Conference set for 5/12/2010 at 02:30 PM in Courtroom 6B, 500 Pearl Street, New York, NY 10007 before Judge Paul G. Gardephe.). (mr) (Entered: 04/22/2010)
05/12/2010		Minute Entry for proceedings held before Judge Paul G. Gardephe: Status Conference held on 5/12/2010. (mr) (Entered: 05/12/2010)
05/13/2010	<u>42</u>	ORDER. The parties shall finalize a date on which the mediation will occur by May 20, 2010; the mediation is to take place on or before June 30, 2010; a representative of Defendants Merrill Lynch, Pierce, Fenner & Smith, Inc., Merrill Lynch & Co., Inc., and Bank of America Corporation shall be present at the mediation. The parties will submit a letter to this Court within five days of the mediation updating this Court on the outcome of the mediation. (Signed by Judge Paul G. Gardephe on 5/12/10) (dj) (Entered: 05/13/2010)
07/01/2010	<u>43</u>	ENDORSED LETTER addressed to Judge Paul G. Gardephe from Phillip A. Goldstein and Brian Schaffer dated 7/1/2010 re: Requesting that the time for the mediation to take place be extended until August 9, 2010, and that the time to submit a letter to the Court concerning the outcome of the mediation be extended until August 13, 2010. ENDORSEMENT: The application is granted. (Signed by Judge Paul G. Gardephe on 7/1/2010) (jpo) (Entered: 07/01/2010)
08/24/2010	<u>44</u>	ORDER OF DISMISSAL that the above-entitled actions be, and hereby are, dismissed with prejudice but without costs; provided, however, that if the settlement is not consummated within sixty days of this order, any party may apply by letter within the sixty-day period for restoration of the actions to the calendar of the undersigned, in which event the actions will be restored. Any pending motions are moot. SO ORDERED. (Signed by Judge Paul G. Gardephe on 8/23/2010) (jmi) (Entered: 08/24/2010)
10/20/2010	<u>45</u>	ORDER. It is hereby ORDERED that the time period to restore this action to the Court's calendar be extended to November 22, 2010. It is further ORDERED that Defendants shall submit comments to Plaintiffs on the draft settlement agreements by October 22, 2010. It is further ORDERED that Defendants shall cooperate with Plaintiffs in preparing the necessary settlement documents such that these matters can be in concluded as expeditiously as possible and settlement payments made to Plaintiffs as expeditiously as possible. (Signed by Judge Paul G. Gardephe on 10/19/10) (dj) Modified on 10/25/2010 (dj). (Entered: 10/20/2010)
11/19/2010	<u>46</u>	ORDER the parties have requested that the time to restore this action to the Court's calendar be extended to 12/22/10. That application is granted. (Signed by Judge Paul G. Gardephe on 11/18/10) (cd) (Entered: 11/19/2010)
12/13/2010	<u>47</u>	STIPULATION AND ORDER OF DISMISSAL WITH PREJUDICE: 1. The Court, having reviewed the Parties' Confidential Settlement Agreement and General Release in camera and finding the same to be a fair and reasonable resolution to a bonafide dispute, approves the settlement, release and discharge of any and all claims and liabilities the named Plaintiffs and opt-in Plaintiffs who have filed consents to join in the above-captioned actions may have against Defendants, including those arising under the Fair Labor Standards Act, 29 USC §201 et seq. and the Family and Medical Leave Act; and 2. The Court dismisses the actions in their entirety with prejudice, with each party to bear their own costs, and terminates Plaintiffs' right to re-open these actions to be placed on the Court's active calendar other than for purposes of enforcing the terms of the Agreement. (Signed by Judge Paul G. Gardephe on 12/13/10) (db) (Entered: 12/13/2010)